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## FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 2/22/05 HB \_\_\_\_\_

SHORT TITLE Employee Abuse Registry Act SB 590/SJCS/aSFC

ANALYST Hanika-Ortiz

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal		

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (AGO)

Department of Health (DOH)

Aging and Long-Term Services Department (ALTSD)

### SUMMARY

#### Synopsis of SFC Amendment

The Senate Finance Committee Amendment clarifies a provider as not civilly liable for the hiring, deciding not to hire or terminating of an individual in good faith pursuant to the Employee Abuse Registry Act.

#### Synopsis of Substitute Bill

SB 590/SJCS enacts the “Employee Abuse Registry Act” (EARA) requiring the DOH to maintain an electronic database registry of direct care providers in long-term care facilities or community based waiver services who have substantiated abuse, neglect, or exploitation charges as determined by DOH and/or ALTSD. The substitute bill covers employees and contractors who provide financial or physical care to the disabled or elderly, but does not include licensed health care professionals practicing within the scope of their license or certified nursing assistants. The substitute bill provides for administrative due process hearings, appeal rights, procedures for removal from the registry after three years, and civil monetary penalties of up to \$5,000 per instance on providers who fail to comply with the terms of the EARA. The DOH and ALTSD must adopt rules by January 1, 2006, which is necessary to carry out the provisions of the Act.

### Significant Issues

The substitute bill directs DOH to review reports of abuse, neglect and exploitation against employees of providers that DOH licenses and investigate those reports to determine whether there is a reasonable basis to believe that abuse, neglect or exploitation occurred. If DOH determines that abuse, neglect, or exploitation occurred, it shall notify the provider and the employee. Similar obligations are placed on ALTSD for employees and providers under its jurisdiction, and require APS to report substantiated finding of abuse, neglect or exploitation to DOH.

The substitute bill establishes a notice and hearing process that DOH and ALTSD must follow before placing a person's name on the registry. The departments will consider the "severity" of the alleged abuse, neglect and exploitation, and if a hearing is requested, the department that made the determination shall conduct the hearing. If an employee is aggrieved by the final decision, the employee would have a right to judicial review.

Long-term care facilities and community-based waiver services would be required to check the registry before making hiring or contracting decisions and keep record of the inquiries to the registry. Providers are offered some immunity if they report abuse, or fail to hire an employee after consulting the registry. After three years, an employee may petition to have his or her name removed from the registry.

The AGO reports the substitute bill clarifies the roles of the ALTSD and the DOH with regard to investigations and hearings. The original bill was unclear with regard to the division of responsibilities between those agencies.

This is a Governor's Priority Bill that directly impacts the Zero Tolerance for Elder Abuse priority.

### **PERFORMANCE IMPLICATIONS**

The AGO notes ALTSD currently has authority to investigate allegations of abuse against adults.

### **FISCAL IMPLICATIONS**

Staff time and resources will be required for rules adoption, fair hearing process, investigating reports of abuse, neglect and exploitation, sanctions, and registry maintenance for both the DOH and ALTSD.

ALTSD anticipates it will need to conduct three to four hearings per year at a cost of about \$3,000 to \$5,000 per hearing, including judicial appeals.

DOH reports current resources are sufficient to develop the registry and conduct hearings. The DOH currently administers the Nurse Aide Registry and could use that structure to help implement a new registry. The maintenance of the registry will require one to two FTE that could receive Medicaid matching funds. The state match funds and cost of fair hearings would be absorbed out of the current budget.

## **ADMINISTRATIVE IMPLICATIONS**

The DOH report the use of Nurse Aide Registry regulations can serve as guidelines to potentially reduce implementation costs.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Duplicates HLHR Sub for HB 626, which modifies the definition of provider and definition of neglect to be more in line with the Resident Abuse Act, modifies language about the fair hearing process and corrects the date for implementing rules from January 2007 to January 2006.

## **TECHNICAL ISSUES**

Trainings for providers will need to be conducted to employers are fully informed of their duties and responsibilities under the substitute bill. Employers should also be required to provide training for their employees.

Consideration should be given to ensure that language or social disadvantage is not a barrier in reaching effective resolution.

## **OTHER SUBSTANTIVE ISSUES**

The substitute bill would make the definitions of abuse, neglect and exploitation the same as the APS definitions. It would also assure that the employee fair hearing process and judicial review are made available by both agencies.

ALTSD report under present law and regulations, there is no comprehensive registry of persons who have had substantiated allegations of abuse, neglect or exploitation. Unless the allegations were serious enough to warrant action by the criminal authorities, it has been fairly easy for persons to move from job to job.

## **ALTERNATIVES**

None

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The ALTSD will continue to investigate abuse and neglect under the Adult Protective Services Act.

**AH/njw:lg**